

REMARKS

Applicant confirms that claims 1, 5-11 and 69-73 are allowed.

Applicant further confirms that claims 12-14, 17, 21-32, 34-38, 40, 42, 47, 50-68 and 75-88 have been withdrawn from consideration.

The Examiner rejected claims 41, 43-46 and 48-49 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In response, the Applicant has amended independent claim 41 by removing the wording "the security fins allowing selective rotation of said closure upon said nozzle". Applicant submits that this amendment overcomes the rejection of the claim under 35 U.S.C. 112, first paragraph. The remaining claims 43-46 and 48-49 depend from claim 41. Applicant therefore respectfully requests that the rejection on these grounds be withdrawn.

The Examiner rejected claims 41, 43-46 and 48-49 under 35 U.S.C. 102(b) as being anticipated by the German reference (4433238). In response, the Applicant has amended claim 41 by adding the limitations that the security fins project radially inwardly from the inner surface of the outer skirt and that each of the security fins have a terminal edge and the terminal edges of the fins are disposed a spaced distance from the first stopping ledge of the nozzle when the closure is engaged with the container.

The Examiner stated this fact on page 3 lines 1-2 of the office action. Additionally, the Applicant has added new claim 89 that depends from claim 41. Claim 89 adds the further limitations that the security fins extend a first distance outwardly from the inner surface of the outer skirt and the inner skirts extend a second distance outwardly from the inner surface of the outer skirt; and that the first distance is smaller than the second distance. Support for the amendment to claim 41 can be found from Figure 4 and page 9, line 21 to page 10, line 2. Support for new claim 89 can be found in Fig. 4 of the instant specification.

The Applicant submits that the amendments to claim 41 distinguish over German patent DE 44 33 238 C1. Figures 1, 2, and 6 of the German patent show the security fins 14 are in contact with the container 6 when the cap and the container are engaged with each other. The security fins 14 of the reference are not disposed a spaced distance from the container, they contact the container. In the instant specification, on the other hand, Figure 4 shows that the security fins 60 do not engage the outer edge 54 of the first stopping ledge 48 of the container. The security fins 60 are spaced a distance away from the first stopping ledge 48. Anticipation under 102(b) requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re W.L. Gore & Assocs. v. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Inasmuch as the German reference lacks the limitation that the security fins be disposed a spaced distance from the container when the cap and container are engaged, Applicant respectfully submits that the German reference does not anticipate claim 41. The remaining

claims 43-46, 48-49 rejected under 35 U.S.C. 102(b) in view of the German reference are dependent from claim 41. Applicant therefore respectfully requests that the rejection of claims 41, 43-46 and 48-49 on these grounds be withdrawn. Applicant respectfully requests reconsideration of claim 41 and solicits allowance of this claim and its dependents 43-46 and 48-49.

The Examiner rejected claim 74 under 35 U.S.C. 102(b) as being anticipated by McCandless (US 5,501,349). The Examiner stated that McCandless teaches a cap 12 with a breakaway skirt 24 having an outer skirt 26 with a plurality of inner skirts 28. Furthermore, the Examiner stated that McCandless teaches a security ring 30 located below the inner skirts. In response, Applicant has canceled claim 74.

With reference to new claim 89, as may be seen from Figures 3 and 5 of the German patent, the security fins 14 extend a first distance from the outer skirt 11 and the inner skirts 12 extend a second distance from the outer skirt 11. The first distance is greater than the second distance, i.e., the security fins 14 extend further inwardly from the outer skirt 11 than do the inner skirts 12. In the instant specification, on the other hand, the security fins 60 extend a first distance from the inner surface 44 of outer skirt 46 and the inner skirts 52 extend a second distance from the inner surface 44. The first distance in this instance is smaller than the second distance. Applicant respectfully submits that the German reference does not show that the security fins should extend less inwardly than the inner skirts and that the reference in fact teaches away from the instant specification inasmuch as it discloses that it is necessary for the security fins 14 to lie in abutting contact with the container. Applicant respectfully submits that this

claim distinguishes over the prior art and that the claim is therefore allowable.

If the Examiner believes a telephone discussion would aid in the prosecution of this case, they are invited to contact the undersigned at (330) 244-1174.

Respectfully submitted at Canton, Ohio this 15th day of Sept., 2003.

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